

Montana Water Court  
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MONTANA WATER COURT, UPPER MISSOURI DIVISION  
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

\* \* \* \* \*

CLAIMANTS: Clayton D. Kaiser; Fern Kaiser

**CASE 41Q-0124-I-2023**

41Q 30134434

41Q 30134436

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Clayton D. Kaiser and Fern Kaiser are the record owners of claims 41Q 30134434 and 41Q 30134436.

2. Claims 41Q 30134434 and 41Q 30134436 were decreed with DNRC issue remarks:

**Claim 41Q 30134434:**

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 3 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.  
THIS CLAIM APPEARS TO BE CLAIMING TWO SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

**Claim 41Q 30134436:**

THE LEGAL LAND DESCRIPTION FOR POINT OF DIVERSION NO. 3 COULD NOT BE REFINED FROM INFORMATION IN THE FILE. THIS CLAIMED POINT OF DIVERSION CANNOT BE CONFIRMED.  
THIS CLAIM APPEARS TO BE CLAIMING THREE SEPARATE SOURCES OF WATER. MORE THAN ONE WATER RIGHT MAY BE INVOLVED.

3. The Claimants were ordered to meet with a DNRC employee to address the issue remarks.

4. On June 28, 2023, DNRC Water Resource Specialist Aamna K. Flemmer filed a Memorandum stating she discussed the issue remarks with the Claimants. Ms. Flemmer reported that she reviewed the scanned claim files and the DNRC Claims Examination Manual to prepare the Memorandum. (Doc.<sup>1</sup>2.00).

According to Ms. Flemmer, there is no water source near claimed point of diversion no. 3 for claims 41Q 30134434 or 41Q 30134436. Ms. Flemmer stated that Claimant Clayton D. Kaiser confirmed that point of diversion no. 3 was claimed in error and Ms. Flemmer recommended the point of diversion be removed from the claims. As these are livestock direct from source claims, place of use no. 3 should also be removed from claims 41Q 30134434 and 41Q 30134436.

Ms. Flemmer stated that the source for point of diversion no. 1 for both claims is not an unnamed tributary of Belt Creek, rather, the source is Power Coulee. If this change is made to both claims, the source issue remark is resolved.

5. An Order was issued setting a July 31, 2023 deadline for Claimants Clayton D. Kaiser and Fern Kaiser to file statements agreeing or disagreeing that claims 41Q 30134434 and 41Q 30134436 be modified as follows:

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<sup>1</sup> “Doc.” numerical references correlate to case file docket numbers in the Water Court’s Full Court case management system.

### Claim 41Q 30134434:

Source Name: POWER COULEE

Source Type: SURFACE WATER

~~Source Name: UNNAMED TRIBUTARY OF BELT CREEK~~

~~Source Type: SURFACE WATER~~

#### Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		SESESW	23	15N	7E	CASCADE
Source Name:	<del>UNNAMED TRIBUTARY OF BELT CREEK</del> POWER COULEE					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		SENENW	26	15N	7E	CASCADE
Source Name:	POWER COULEE					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		NENE	27	15N	7E	CASCADE
Source Name:	<del>UNNAMED TRIBUTARY OF BELT CREEK</del>					
Period of Diversion:	<del>JANUARY 1 TO DECEMBER 31</del>					
Diversion Means:	<del>LIVESTOCK DIRECT FROM SOURCE</del>					

#### Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			SESESW	23	15N	7E	CASCADE
2			SENENW	26	15N	7E	CASCADE
3			NENE	27	15N	7E	CASCADE

### Claim 41Q 30134436:

Source Name: SPRING, UNNAMED TRIBUTARY OF POWER COULEE

Source Type: GROUNDWATER

~~Source Name: SPRING, UNNAMED TRIBUTARY OF TILLINGHAST CREEK~~

~~Source Type: GROUNDWATER~~

~~Source Name: SPRING, UNNAMED TRIBUTARY OF BELT CREEK~~

~~Source Type: GROUNDWATER~~

#### Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NESESW	23	15N	7E	CASCADE
Source Name:	<del>SPRING, UNNAMED TRIBUTARY OF BELT CREEK</del> POWER COULEE					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	SPRING BOX					
2		SENENW	26	15N	7E	CASCADE
Source Name:	SPRING, UNNAMED TRIBUTARY OF POWER COULEE					
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	SPRING BOX					
3		NENE	27	15N	7E	CASCADE
Source Name:	<del>SPRING, UNNAMED TRIBUTARY OF TILLINGHAST CREEK</del>					
Period of Diversion:	<del>JANUARY 1 TO DECEMBER 31</del>					
Diversion Means:	SPRING BOX					

Place of Use:

ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1			NESES	23	15N	7E	CASCADE
2			SEENW	26	15N	7E	CASCADE
3			NENE	27	15N	7E	CASCADE

(Doc. 3.00). The Order stated that if nothing were filed by the deadline, this Master would conclude the Claimants agree with the proposed changes. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

### PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks decreed on a claim. Section 85-2-248, MCA.
2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.
3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

### RECOMMENDATION

1. Claims 41Q 30134434 and 41Q 30134436 should be modified as shown in Finding of Fact No. 5.  
Post Decree Abstracts of Water Right Claims are served with the Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

Clayton D. Kaiser  
Fern Kaiser  
93 Kaiser Ln.  
Geysers, MT 59447-9049